



Department of Environmental Protection

Jeb Bush
Governor

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

David B. Struhs
Secretary

CONSOLIDATED ENVIRONMENTAL RESOURCE PERMIT AND SOVEREIGN SUBMERGED LANDS AUTHORIZATION

PERMITTEE/AUTHORIZED ENTITY:

Captain Lawrence S. Cotton
P.O. Box 9001
U.S. Dept. of the Navy, Commanding
Officer, Naval Air Facility
Key West, FL 33040-9001

AGENT:

C/O James M. Hudgens
CZR Incorporated, President
1061 East Indiantown Road, Suite 100
Jupiter, FL 33477-5143

Permit/Authorization Number:

0207625-001-EI

Date of Issue: June 17, 2003

Expiration Date of Construction Phase:

June 17, 2013

County: Monroe

Project: Key West Maintenance Dredging
Project

This permit is issued under the authority of Part IV of Chapter 373, F.S., and Title 62, Florida Administrative Code (F.A.C.). The activity is not exempt from the requirement to obtain an environmental resource permit for those requirements to which the United States has waived its sovereign immunity. Pursuant to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity.

This permit constitutes certification of compliance with water quality standards under Section 401 of the Clean Water Act, 33 U.S.C. 1344. This permit also constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Management Act.

This activity also requires a proprietary authorization, as the activity is located on sovereign submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund, pursuant to Article X, Section 11 of the Florida Constitution, and Sections 253.002 and 253.77, F.S. The activity is not exempt from the need to obtain a proprietary authorization. The Department has the responsibility to review and take final action on this request for proprietary authorization in accordance with Section 18-21.0051, and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C. In addition to the above, this

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proprietary authorization has been reviewed in accordance with Chapter 253, F.S., Chapter 18-21 and 62-343.075, F.A.C., and the policies of the Board of Trustees.

As staff to the Board of Trustees, the Department has reviewed the activity described below, and has determined that the activity qualifies for a consent to use sovereign, submerged lands, as long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein. Therefore, consent is hereby granted, pursuant to Chapter 253.77, Florida Statutes to perform the activity on the specified sovereign submerged lands.

A copy of this authorization also has been sent to the U.S. Army Corps of Engineers (USACOE) for review. The USACOE may require a separate permit. Failure to obtain this authorization prior to construction could subject you to enforcement action by that agency. You are hereby advised that authorizations also may be required by other federal, state, and local entities. This authorization does not relieve you from the requirements to obtain all other required permits and authorizations.

The above named permittee is hereby authorized to construct the work shown on the application and approved drawing(s), plans, and other documents attached hereto or on file with the Department and made a part hereof. This permit is subject to the limits, conditions, and locations of work shown in the attachments, and is also subject to the attached General Conditions and Specific Conditions, which are a binding part of this permit and authorization. The attached additional provisions contain conditions that will be incorporated in either the Project Plans and Specifications or the U.S. Army Corps of Engineers Section 404 permit. You are advised to read and understand these drawings and conditions prior to commencing the authorized activities, and to ensure the work is conducted in conformance with all the terms, conditions, and drawings. If you are utilizing a contractor, the contractor also should read and understand these drawings and conditions prior to commencing the authorized activities. Failure to comply with all drawings and conditions may constitute grounds for revocation of the permit and appropriate enforcement action.

ACTIVITY DESCRIPTION:

The project entails maintenance dredging of the federal navigation channel at Key West using a hydraulic (cutter head) dredge. The dredge areas include the main ship channel from its southern terminus, extending north and including cuts A, B, and C, the channel widener at cut C known as the turning basin, and Truman Harbor. The maintenance dredging is to a depth of -34 MLW plus 3 feet advance maintenance plus 1 foot allowable overdepth. The resulting dredged material volume will be approximately 1,500,000 cubic yards. The dredged material will be pumped via pipeline (approximately ten miles) to disposal sites on Rockland Key. Some of the material will be placed in the western deep rock pit to depths ranging between -2 and -6 feet MLW in order to restore optimal

water depths for seagrass habitat. The rest of the material will be placed in a contained disposal site, which will be constructed on uplands and wetlands adjacent to the pit.

ACTIVITY LOCATION:

The activities are located at Key West and Rockland Key in Monroe County. Activities within the Truman Annex Harbor are located in Section 1, Range 24E, Township 68S and Section 6, Range 2E, Township 68S. Activities at Rockland Key are located at Section 21, Range 26E, Township 67S. All activities are located along the Straits of Florida, within the Florida Keys National Marine Sanctuary, Class III Waters, Outstanding Florida Waters.

GENERAL CONDITIONS:

- 1 All activities authorized by this permit shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit and Part IV, Chapter 373, F.S.
2. This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by the Department staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
3. Activities approved by this permit shall be conducted in a manner that does not cause violations of state water quality standards. The permittee shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. Temporary erosion control shall be implemented prior to and during construction, and permanent control measures shall be completed within 7 days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual; A Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988), unless a project-specific erosion and sediment control plan is approved as part of the permit. Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.

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4. The permittee shall notify the Department of the anticipated construction start date within 30 days of the date that this permit is issued. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the Department an "Environmental Resource Permit Construction Commencement" notice (Form No. 62-343.900(3), F.A.C.) indicating the actual start date and the expected completion date.
5. When the duration of construction will exceed one year, the permittee shall submit construction status reports to the Department on an annual basis utilizing an "Annual Status Report Form" (Form No. 62-343.900(4), F.A.C.). Status Report Forms shall be submitted the following June of each year.
6. Within 30 days after completion of construction of the permitted activity, the permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual as authorized by law, utilizing the supplied "Environmental Resource Permit As-Built Certification by a Registered Professional" (Form No. 62-343.900(5), F.A.C.). The statement of completion and certification shall be based on on-site observation of construction or review of as-built drawings for the purpose of determining if the work was completed in compliance with permitted plans and specifications. This submittal shall serve to notify the Department that the system is ready for inspection. Additionally, if deviation from the approved drawings are discovered during the certification process, the certification must be accompanied by a copy of the approved permit drawings with deviations noted. Both the original and revised specifications must be clearly shown. The plans must be clearly labeled as "as-built" or "record" drawing. All surveyed dimensions and elevations shall be certified by a registered surveyor.
7. Should any other regulatory agency require changes to the permitted system, the permittee shall notify the Department in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.
8. This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 40E-4 or Chapter 40E-40, F.A.C.
9. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under Section 373.421(2), F.S., provides otherwise.

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10. The permittee shall notify the Department in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of a permitted system or the real property on which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Section 62-343.130, F.A.C. The permittee transferring the permit shall remain liable for corrective actions that may be required as a result of any violations prior to the sale, conveyance or other transfer of the system.
11. Upon reasonable notice to the permittee, Department authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.
12. The permittee shall immediately notify the Department in writing of any previously submitted information that is later discovered to be inaccurate.

SPECIFIC CONDITIONS:

- 1 No work shall be conducted under this permit for the initial or subsequent dredging events until the permittee has received a written **Notice to Proceed** from the Department. At least forty-five (45) days prior to issuance of the notice to proceed, the permittee shall submit the following items to be approved by the Department prior to commencement of construction:
 - a) A biological monitoring plan developed to document direct and secondary impacts of the maintenance dredging project. The monitoring plan shall include pre-, during- and post-construction assessments that contain the following elements:
 - Quantitative and qualitative descriptions of the benthic communities in and adjacent to the dredge footprint of the channel, turning basin and the pipeline corridor.
 - ii. Quantitative and qualitative descriptions of the benthic communities in the western Rockland Key pit disposal site and the adjacent open waters that may be subject to direct or secondary impacts of this project.
 - iii. Quantitative and qualitative descriptions of the wetlands at and adjacent to the proposed upland containment site. This shall also include information about the wetland hydroperiod and flow patterns.
 - iv. Transplantation and relocation protocols for any corals located within the dredge footprint greater than or equal to 25 cm in dimension.

- v. Background sedimentation characteristics in the dredged footprint and pipeline corridor.
 - vi. Monitoring for sedimentation on nearby seagrass and coral communities.
 - vii. Monitoring stations and location map.
 - viii. Pre-, during-, and post construction monitoring reports.
 - ix. Annual reporting for a period of two years after project completion.
- b) A restoration plan developed to address the direct and secondary impacts to the benthic communities in the Rockland Key pit. This plan shall include:
 - i) A planting plan (species, densities, and methods) to expedite seagrass recruitment.
 - ii) Source of plant material.
 - iii) Success criteria and success monitoring
- c) A mitigation plan developed to address the direct and secondary impacts to the wetlands at and adjacent to the proposed upland containment site. The mitigation shall offset the impacts at a restoration or creation ratio of between 2:1 and 5:1, depending on the functions provided by the impact site, the lift provided by the mitigation, and the length of time required to off-set the impacts. This plan shall include:
 - i) A planting plan (species, densities, and methods).
 - ii) Site construction plan including soils, hydroperiod and flow patterns.
 - iii) Success criteria and success monitoring.
- d) An operational contingency plan that describes the contractor's response in the event of storms and operational failures (e.g. breaks in dredge pipes, movement of dredge pipes).
- e) Two complete sets of construction plans and specification for the proposed activity. The plans shall include the following:

- i) Plan views of the proposed activity depicting the mean high-water line any easement boundary, or the erosion control line, within the area of influence of the proposed activity. Identify the boundaries of significant geographical features (e.g., channels, shoals) and natural communities (e.g., submerged grass beds, hardbottom, or mangroves) within the area of influence of the activity.
 - ii) A sufficient number of elevation views of the proposed activity depicting the mean high-water line, any easement boundary, and the erosion control line, within the area of influence of the proposed activity. Identify the boundaries of significant geographical features and natural communities in the area of influence of the proposed activity.
 - iii) Details of construction, including materials and general construction procedures and equipment to be used (e.g., construction access, dredging method, dredged material containment, pipeline location).
 - iv) The Project Plans and Specifications will include applicable conditions contained in Attachment I. Added
- f) Plans for dredging and stockpiling sand dredged from the south end of the channel separately from the rest of the dredged material.
- g) Design details, locations, and drawings of the structures proposed to contain turbidity within the western Rockland Key pit.
- 2) The permittee shall hold and save the Department harmless as authorized by law from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the permit.
- 3) If historical or archaeological artifacts, such as, but not limited to, Indian canoes, arrow heads, pottery or physical remains, are discovered at any time within the project site, the permittee shall immediately stop all activities which disturb the soil and contact the Department and the Bureau of Historic Preservation, Division of Historical Resources, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250.
- 4) The permittee shall conduct a pre-construction conference with all contractors, the engineer of record, the FKNMS, and a representative of the Department's Bureau of Beaches & Wetland Resources to establish an understanding among the parties as to the items specified in the specific and general conditions of the permit. The pre-construction conference will be

held at least 20 days prior to construction activities. The permittee shall provide a minimum of 10 days advance written notification to the following offices advising of the date, time and location of the pre-construction conference:

DEP, Beaches and Wetland Resources,
3900 Commonwealth Boulevard, MS 300
Tallahassee, Florida 32399-3000
phone: (850) 487-4471
fax: (850) 488-5257

DEP, South District Office
2295 Victoria Ave, #364
Ft. Myers, Florida 33901-3881
(239) 332-6975

Florida Keys National Marine Sanctuary
216 Ann Street
Key West, FL 33040-6603
(305) 292-0311

Florida Keys National Marine Sanctuary
P.O. Box 1083
Key Largo, FL 33037
(305) 852-7717 x 27

- 5) Beach compatible sand shall be stored separately from the rest of the dredged material on the Rockland Key upland containment site. All of this sand shall be reserved for State use in beach nourishment projects for up to two (2) years at no cost to the State.
- 6) Sediment and turbidity shall be controlled during all construction and dredged material disposal activities to contain suspended sediment within the approved work areas. The permittee shall control sediment runoff from the upland containment site and rock pit disposal sites into the marine and wetland environment and comply with the States water quality standard for turbidity in Outstanding Florida Waters. Flocculants are not authorized and may not be used without a minor modification to this permit.

MONITORING REQUIRED:

Water Quality - Turbidity - Nephelometric Turbidity Units (NTUs)

Frequency: Twice daily at least 4 hours apart during all dredging and disposal operations. However, when the mixing zone is reduced to less than 150 meters due to the proximity of resources identified by the FKNMS, turbidity readings should be taken every two hours until the resource area is no longer within the 150 meter of the construction site.

Dredge Site:

Location: Background: At mid-depth, at least 300 meters upcurrent from the dredge or discharge point and clearly outside the influence of any turbidity generated by the project.

Compliance: At mid-depth, no more than 150 meters downcurrent from the dredge or discharge point or at the edge of any seagrass beds or coral communities (whichever is closer) within the densest portion of any visible turbidity plume.

Disposal Site:

Location: Background: At mid-depth, at an overall depth similar to the compliance site, at least 300 meters upcurrent from the discharge point and clearly outside the influence of any turbidity generated by the project.

Compliance: At mid-depth, no more than 150 meters downcurrent from the discharge point or at the edge of any seagrass beds or coral communities (whichever is closer) within the densest portion of any visible turbidity plume.

Construction Sites – Rockland Key:

Frequency: Twice daily at least 4 hours apart during all construction activities involving earth-work operations. However, when the mixing zone is reduced to less than 150 meters due to the proximity of resources identified by the FKNMS, turbidity readings should be taken every two hours until the resource area is no longer within the 150 meter of the construction site. When the earth-work activities are completed but the disturbed soils have not yet stabilized, turbidity monitoring shall be conducted within a half hour following rain showers.

Location: Background: At mid-depth, at an overall depth similar to the compliance site, at least 300 meters upcurrent from the in-water construction site or the point where runoff from an upland construction site enters the waterbody, clearly outside the influence of any turbidity generated by the project.

Compliance: At mid-depth, no more than 150 meters downcurrent from the in-water construction site or the point where runoff from an upland construction site enters the waterbody or at the edge of any seagrass beds or coral communities (whichever is closer) within the densest portion of any visible turbidity plume.

All monitoring data shall be submitted within one week of analysis with documents containing the following information: (1) permit number; (2) dates of sampling and analysis; (3) a statement describing the methods used in collection, handling, storage and analysis of the samples; (4) a map indicating the sampling locations; (5) a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data.

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Monitoring reports shall also include the following information for each sample that is taken:

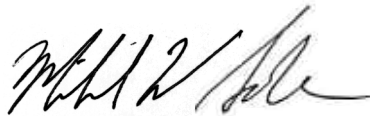
- (a) time of day samples taken;
- (b) depth of water body;
- (c) depth of sample;
- (d) antecedent weather conditions;
- (e) tidal stage and direction of flow; and
- (f) wind direction and velocity.

The compliance locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals turbidity levels at the compliance site in excess of the turbidity level at the corresponding background site, **construction activities shall cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any such occurrence shall also be immediately reported to the DEP South District office in Key West.

Monitoring reports shall be submitted to the Bureau of Beaches and Wetland Resource in Tallahassee and to the DEP South District office. Failure to submit reports in a timely manner constitutes grounds for revocation of the permit. When submitting this information to the DEP, please clearly include, at the top of each page or as a cover page to the submittal: **"This information is provided in partial fulfillment of the monitoring requirements in Permit No. 0207625-001-EI, Key West Maintenance Dredging Project."**

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Michael W. Sole
Bureau of Beaches and Wetland Resources

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Captain Cotton, Department of the Navy, Key West
Will Sloger, Department of the Navy
Fritz Wettstein, DEP South District, Key West
Tania McMillan, DEP South District, Marathon
Billy Causey, NOAA FKNMS, Marathon
Lauri MacLaughlin, NOAA FKNMS, Key Largo
Mark Latch, DEP Rec & Parks, Tallahassee
Marshall Flake, DEP Rec & Parks, Tallahassee
Mark Knapke, DEP Rec & Parks, Ft. Zachary Taylor
David Boyd, DEP Rec & Parks, South District, Largo
Mark Miller DEP, Office of General Counsel
Dianne Griffin, USACE, Jacksonville
John Studt, USACOE, South District
Paden Woodruff, DEP BBWR
Ralph Clark, DEP BBWR
Vladimir Kosmynin, DEP BBWR
Melisa Reiter, PBS&J
Jennifer Brown, DEP BBWR
Department of Community Affairs
File

ADDITINOAL PROVISIONS
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KEY WEST CHANNEL MAINTENANCE DREDGING

1. The permittee shall conduct pre- and post-construction assessments to document primary and secondary impacts of the dredging project. The assessment shall include: (1) quantitative descriptions of benthic communities in and adjacent to the dredge footprint, throughout the disposal pipeline route, and within the dredge material disposal sites; (2) descriptions of turbidity levels and sediment characteristics in the dredge footprint, disposal pipeline corridor, areas within the downstream turbidity plume, and in the backcountry area adjacent to the dredge material disposal sites; (3) quantify in an estimate (in acres or square feet), (prior to construction), potential direct and indirect impacts to Essential Fish Habitat by habitat type. This shall be done within and adjacent to the main ship channel, dredge disposal pipeline route and disposal site, and areas adjacent to the disposal site; (4) the mitigation plan shall include success criteria for evaluating the effectiveness of the proposed mitigation; (5) a monitoring plan, (6) specifically address coral impacts; and (7) actions to offset the effects of sedimentation and turbidity. All plans shall be submitted to and approved by the FKNMS and FDEP prior to the commencement of work.

2. Prior to construction the permittee shall provide quantitative descriptions of benthic communities in and immediately adjacent to the dredge footprint and along the route of the pipeline prior to construction to the FKNMS and FDEP. This includes the upper ledges of the channel, Cut B, Cut C and the turning basin. The permittee shall provide this characterization based on a review of videos and information gathered using diver tows.

3. The spoil pipe will be laid to minimize impacts. A plan shall be provided to the FKNMS and FDEP detailing the placement of the pipe. Placement may include floating, supporting or bottom placement. This plan shall be submitted to and approved by the FKNMS prior to the commencement of work.

4. Pre-project monitoring shall establish background turbidity levels and sediment characteristics in the dredging footprint. The permittee shall establish a protocol to monitor the pipeline as part of a turbidity monitoring plan. The areas to be monitored include Cut C, Cut B, and the way points designated by the FKNMS.

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5. The permittee shall not violate turbidity requirements imposed by the FDEP in its permit for the dredging project. In the event water quality standards are exceeded work shall stop until the cause is corrected.

6. The permittee will contract for pre-dredging, during dredging and post-dredging water quality monitoring focused on turbidity and sedimentation from Key West Harbor and approaches from the outer coral reef tract.

7. The permittee shall develop an operational contingency plan that describes their response in the event of storms (e.g., hurricanes, spring storms) and operational failures (e.g., breaks in the dredge pipes, movement of dredge pipes). This plan shall be submitted to and approved by the FKNMS and FDEP prior to construction.

8. The permittee shall place the dredge material disposal pipeline in the corridor jointly agreed upon by the FKNMS and the permittee or their designee. The permittee shall utilize field side scan survey results, which identify a route in Hawks Channel south of Key West for the placement of the disposal pipeline, except for the corridor south of Stock Island.

9. The permittee shall, to the greatest extent practicable, place the pipeline on the bottom in Hawk Channel and in Boca Chica Channel in a manner that causes the least amount of benthic impact to seagrass, coral, hardbottom communities and in the vicinity of the Muir wreck. The permittee shall position the pipeline in a manner that causes the least benthic impact. In the event it is deemed not practicable to float or raise the pipeline in Hawk Channel, the permittee will consult with FKNMS to determine alternative means to minimize impacts to the seagrass community south of Stock Island. In all project areas, the permittee shall consult with FKNMS to determine alternative means to minimize impacts to sensitive marine communities.

10. The permittee shall conduct a stability analysis for the dredged material pipeline for its entire length. The permittee shall anchor or otherwise stabilize the dredge material pipeline consistent with this analysis and in such a manner as to ensure

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that the pipeline will remain stable in a 50-year storm event. A copy of the analysis shall be provided to the FKNMS and FDEP.

11. The permittee shall use the appropriate type of anchoring methods on the dredge material pipeline to avoid impacts to sensitive resources during storm events. The permittee or their designee must consult with FKNMS regarding the anchoring methods prior to the pipeline being installed.

12. The permittee or their designee shall advise contractors and others involved in the project that FKNMS is available to assist in the placement of anchors for the dredge material disposal pipeline in order to avoid or minimize damage and injury to Sanctuary resources.

13. The permittee shall ensure that the dredge disposal management areas on East Rockland Key, (upland and rock pit disposal sites, etc.), shall prevent runoff into the marine environment and comply with FDEP requirements. The permittee agrees and understands that additional safeguards may be required and any impact to resources from dredge disposal management areas will require restoration.

14. The permittee's turbidity controls at the East Rockland Key disposal site shall include but are not limited to: a berm at the mouth of the pit and double turbidity screening to reduce sediment impact on adjacent marine communities (e.g. sponges, macro-algae, seagrass and hardbottom communities).

15. The permittee shall submit drawings to demonstrate the location and size of turbidity control devices and any other construction projects proposed at the dredge material disposal site to the FKNMS and FDEP prior to their installation. The FKNMS must review and approve these drawings prior to initiation of activities at the disposal site to minimize construction operations from impacting seagrass and mangrove communities bordering the quarry disposal site.

16. The permittee agrees and understands that the FKNMS or their designated representatives shall be given the opportunity to remove benthic marine resources found in the East Rockland Key disposal site(s) prior to dredge material placement. The

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permittee shall notify the FKNMS a minimum of two weeks prior to the start date of disposal site fill activities.

17. The permittee shall comply with the no impact avoidance areas (no anchor zones) identified during pre-construction assessments and identified by FKNMS staff. The permittee understands and agrees that an anchoring plan is required to be submitted to and approved by the FKNMS and FDEP prior to the start of work. The FKNMS may add to the list of no anchoring/avoidance areas prior to the commencement of construction.

18. The permittee shall notify its contractors and others involved in the project that the FKNMS is available to provide information regarding alternative anchoring practices, such as use of tug power or mooring pins, and how to avoid anchoring impacts. The permittee shall record, via 8-digit GPS coordinate, the location of each anchor placement and provide this data to the FKNMS and FDEP for their inspection. If FKNMS staff are not available to ground-truth proposed anchor placements outside the dredged footprint; when practicable the permittee shall provide divers to place anchors prior to their installation.

19. The permittee shall prevent cables from scouring benthic resources.

20. The permittee shall avoid damage to benthic resources located in the Key West Harbor and Turning Basin. The North and Northwest portions of the Key West Harbor Turning Basin shall be avoided during dredging operations. A 30-foot buffer area shall remain unimpacted to protect corals and benthic resources identified along the ledges of the original dredge footprint in this area. The permittee or their designee shall make others aware that the FKNMS is available to assist in the placement of a 30-foot buffer demarcation along these ledges.

21. The permittee agrees and understands that in the area of the South and Southeast walls of Truman Harbor, where living coral and seagrass communities are found, the permittee shall avoid this area during dredging operations.

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22. The permittee shall at a minimum conduct: a pre-construction meeting with maritime interests; monthly new releases in the local press, United States Coast Guard - *Notice to Mariners* and other media to advise public of the dredge progress; and consult with the boat rental industry, local governments and tourist industry representatives via the Large Ship Working Group, the Propeller Club, and City of Key West Chamber of Commerce.

23. The permittee shall alert the FKNMS and FDEP staff of any impacts or accidents that may occur. The permittee shall initiate within 24 hours of any incident, the recovery and restoration of any damage to living coral in the event of unforeseen accidents, such as anchor damage, anchor cable scouring, or disposal pipeline failure. The FKNMS may participate and assist in this effort.

24. The permittee shall complete at least 24 hours prior to work obviously impacting coral resources, all activities necessary to temporarily or permanently relocate these resources so that dredging activities may proceed.

25. The permittee agrees and understands that the Contracting Officer's Representative (COR), Contracting Officer Representative's Inspector (CORI) or permittee's designated point of contact (POC) shall be available at all times, as an onsite point of contact for the FKNMS. These individual's shall consider FKNMS comments on dredge operations, on other aspects of the work provided during the course of the project, and communicate these concerns to the COR and contracting officer.

26. The permittee agrees to act as a point of contact to coordinate with the contracting officer and arrange for NOAA observer(s) to be aboard the permittee's vessel(s) during all activities authorized by this permit.

27. The permittee shall avoid injury to all federally protected species and marine communities such as corals, patch reefs, sea grasses and hard bottom habitat. Unavoidable impact shall require restoration and mitigation.

28. The permittee agrees and understands that all vessels or equipment associated with proposed dredging activities shall operate in a manner consistent with the FKNMS regulations

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designed to protect sensitive resources including 15 CFR §922.163 (a)(5) *Operation of Vessels* and 15 CFR §922.164 (a) *Areas To Be Avoided*. Vessel drafts must be taken into careful consideration during all phases of dredging related activities in all FKNMS waters (especially shallow areas in or adjacent to Hawk Channel, Boca Chica Channel and the main ship channel). See attached regulations for prohibitions on operations of vessels within the FKNMS.

29. The permittee shall comply with the attached standard manatee construction measures.



Jeb Bush
Governor

Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

David B. Struhs
Secretary

CONSOLIDATED ENVIRONMENTAL RESOURCE PERMIT AND SOVEREIGN SUBMERGED LANDS AUTHORIZATION

PERMITTEE/AUTHORIZED ENTITY:

Captain Lawrence S. Cotton
U.S. Dept. of the Navy, CO
P.O. Box 9001
Officer, Naval Air Facility
Key West, FL 33040-9001

AGENT:

c/o James M. Hudgens
CZR Incorporated, President
1061 East Indiantown Road, Suite 100
Jupiter, FL 33477-5143

Permit/Authorization Number:

0207625-002-EM

Date of Issue: August 12, 2003

Expiration Date of Construction Phase:

June 17, 2013

County: Monroe

Project: Key West Maintenance Dredging
Project

This major permit modification supercedes permit number 0207625-001-EI.

This major permit modification is issued under the authority of Part IV of Chapter 373, F.S., and Title 62, Florida Administrative Code (F.A.C.). The activity is not exempt from the requirement to obtain an environmental resource permit for those requirements to which the United States has waived its sovereign immunity. Pursuant to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity.

This permit constitutes certification of compliance with water quality standards under Section 401 of the Clean Water Act, 33 U.S.C. 1344. This permit also constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Management Act.

This activity also requires a proprietary authorization, as the activity is located on sovereign submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund, pursuant to Article X, Section 11 of the Florida Constitution, and Sections 253.002 and 253.77, F.S. The activity is not exempt from the need to obtain a proprietary authorization. The Department has the

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responsibility to review and take final action on this request for proprietary authorization in accordance with Section 18-21.0051, and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C. In addition to the above, this proprietary authorization has been reviewed in accordance with Chapter 253, F.S., Chapter 18-21 and 62-343.075, F.A.C., and the policies of the Board of Trustees.

As staff to the Board of Trustees, the Department has reviewed the activity described below, and has determined that the activity qualifies for a consent to use sovereign, submerged lands, as long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein. Therefore, consent is hereby granted, pursuant to Chapter 253.77, Florida Statutes to perform the activity on the specified sovereign submerged lands.

A copy of this authorization also has been sent to the U.S. Army Corps of Engineers (USACOE) for review. The USACOE may require a separate permit. Failure to obtain this authorization prior to construction could subject you to enforcement action by that agency. You are hereby advised that authorizations also may be required by other federal, state, and local entities. This authorization does not relieve you from the requirements to obtain all other required permits and authorizations.

The above named permittee is hereby authorized to construct the work shown on the application and approved drawing(s), plans, and other documents attached hereto or on file with the Department and made a part hereof. This permit is subject to the limits, conditions, and locations of work shown in the attachments, and is also subject to the attached General Conditions and Specific Conditions, which are a binding part of this permit and authorization. The attached additional provisions contain conditions that will be incorporated in either the Project Plans and Specifications or the U.S. Army Corps of Engineers Section 404 permit. You are advised to read and understand these drawings and conditions prior to commencing the authorized activities, and to ensure the work is conducted in conformance with all the terms, conditions, and drawings. If you are utilizing a contractor, the contractor also should read and understand these drawings and conditions prior to commencing the authorized activities. Failure to comply with all drawings and conditions may constitute grounds for revocation of the permit and appropriate enforcement action.

ACTIVITY DESCRIPTION (~~strikethroughs~~ are deletions, underlines are additions):

The project entails maintenance dredging of the Federal navigation channel at Key West ~~using a hydraulic (cutter head) dredge~~. The dredge areas include the main ship channel from its southern terminus, extending north and including cuts A, B, and C, the channel widener at cut C known as the turning basin, and Truman Harbor. The maintenance dredging is to a depth of -34 MLW plus 32 feet advance maintenance (except for Truman Harbor where the advance maintenance will be limited to 1

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foot), plus 1 foot allowable overdepth. The resulting dredged material volume will be approximately 1,500,000 1,000,000 cubic yards. The dredged material will be pumped via pipeline (approximately ten miles) to disposal sites on Rockland Key. Some of the material will be placed in the western deep rock pit to depths ranging between 2 and 6 feet MLW in order to restore optimal water depths for seagrass habitat. The rest of the material will be placed in a contained disposal site, which will be constructed on uplands and wetlands adjacent to the pit placed in two disposal areas. All loose material in Truman Harbor and any material not suitable for ocean disposal will be pumped via pipeline to an upland disposal area on Fleming Key. Dredged material consisting of rock and sand will be deposited outside of State waters in an Offshore Dredged Material Disposal Site (ODMDS) that has been approved by the U.S. Environmental Protection Agency (EPA).

ACTIVITY LOCATION (strikethroughs are deletions, underlines are additions):

The activities are located at Key West and ~~Rockland~~Fleming Key in Monroe County. Activities within the Truman Annex Harbor are located in Section 1, Range 24E, Township 68S and Section 6, Range 2E, Township 68S. Activities at ~~Rockland~~Fleming Key are located at Sections ~~24~~30 and 31, Range ~~26~~25E, Township 67S. All activities are located along the Straits of Florida, within the Florida Keys National Marine Sanctuary, Class III Waters, Outstanding Florida Waters.

GENERAL CONDITIONS:

- 1 All activities authorized by this permit shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit and Part IV, Chapter 373, F.S.
- 2 This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by the Department staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
- 3 Activities approved by this permit shall be conducted in a manner that does not cause violations of state water quality standards. The permittee shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. Temporary erosion control shall be implemented prior to and during construction, and permanent control measures shall be completed within 7 days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is

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completed and soils are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual; A Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988), unless a project-specific erosion and sediment control plan is approved as part of the permit. Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.

4. The permittee shall notify the Department of the anticipated construction start date within 30 days of the date that this permit is issued. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the Department an "Environmental Resource Permit Construction Commencement" notice (Form No. 62-343.900(3), F.A.C.) indicating the actual start date and the expected completion date.
5. When the duration of construction will exceed one year, the permittee shall submit construction status reports to the Department on an annual basis utilizing an "Annual Status Report Form" (Form No. 62-343.900(4), F.A.C.). Status Report Forms shall be submitted the following June of each year.
6. Within 30 days after completion of construction of the permitted activity, the permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual as authorized by law, utilizing the supplied "Environmental Resource Permit As-Built Certification by a Registered Professional" (Form No. 62-343.900(5), F.A.C.). The statement of completion and certification shall be based on on-site observation of construction or review of as-built drawings for the purpose of determining if the work was completed in compliance with permitted plans and specifications. This submittal shall serve to notify the Department that the system is ready for inspection. Additionally, if deviation from the approved drawings are discovered during the certification process, the certification must be accompanied by a copy of the approved permit drawings with deviations noted. Both the original and revised specifications must be clearly shown. The plans must be clearly labeled as "as-built" or "record" drawing. All surveyed dimensions and elevations shall be certified by a registered surveyor.
7. Should any other regulatory agency require changes to the permitted system, the permittee shall notify the Department in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.
8. This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property

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which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 40E-4 or Chapter 40E-40, F.A.C.

9. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under Section 373.421(2), F.S., provides otherwise.
10. The permittee shall notify the Department in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of a permitted system or the real property on which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Section 62-343.130, F.A.C. The permittee transferring the permit shall remain liable for corrective actions that may be required as a result of any violations prior to the sale, conveyance or other transfer of the system.
11. Upon reasonable notice to the permittee, Department authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.
12. The permittee shall immediately notify the Department in writing of any previously submitted information that is later discovered to be inaccurate.

SPECIFIC CONDITIONS (~~strikethroughs~~ are deletions, underlines are additions):

- 1) No work shall be conducted under this permit for the initial or subsequent dredging events until the permittee has received a written **Notice to Proceed** from the Department. At least forty-five (45) days prior to issuance of the notice to proceed, the permittee shall submit the following items to be approved by the Department prior to commencement of construction:
 - a) A biological monitoring plan developed to document direct and secondary impacts of the maintenance dredging project. The monitoring plan shall include pre-, during- and post-construction assessments that contain the following elements:
 - i. Quantitative and qualitative descriptions of the benthic communities in and adjacent to the dredge footprint of the channel, turning basin and the pipeline corridor.
 - ii. ~~Quantitative and qualitative descriptions of the benthic communities in the western Reekland Key pit disposal site and the adjacent open waters that may be subject to direct or secondary impacts of this project.~~

- ~~iii. Quantitative and qualitative descriptions of the wetlands at and adjacent to the proposed upland containment site. This shall also include information about the wetland hydroperiod and flow patterns.~~
- ~~iv. ii.~~ Transplantation and relocation protocols for any corals located within the dredge footprint greater than or equal to 25 cm in dimension.
- ~~v. iii.~~ Background sedimentation characteristics in the dredged footprint and pipeline corridor.
- ~~vi. iv.~~ Monitoring for sedimentation on nearby seagrass and coral communities.
- ~~vii. v.~~ Monitoring stations and location map.
- ~~viii. vi.~~ Pre-, during-, and post construction monitoring reports.
- ~~ix. vii.~~ Annual reporting for a period of two years after project completion.
- b) ~~A restoration plan developed to address the direct and secondary impacts to the benthic communities in the Rockland Key pit. This plan shall include:~~
 - ~~i) A planting plan (species, densities, and methods) to expedite seagrass recruitment.~~
 - ~~ii) Source of plant material.~~
 - ~~iii) Success criteria and success monitoring~~
- e) ~~A mitigation plan developed to address the direct and secondary impacts to the wetlands at and adjacent to the proposed upland containment site. The mitigation shall offset the impacts at a restoration or creation ratio of between 2:1 and 5:1, depending on the functions provided by the impact site, the lift provided by the mitigation, and the length of time required to off set the impacts. This plan shall include:~~
 - ~~i) A planting plan (species, densities, and methods).~~
 - ~~ii) Site construction plan including soils, hydroperiod and flow patterns.~~
 - ~~iii) Success criteria and success monitoring.~~

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- d) b) An operational contingency plan that describes the contractor's response in the event of storms and operational failures (e.g. breaks in dredge pipes, movement of dredge pipes).
- e) c) Documentation from the NMFS and USFWS that the project is not likely to adversely affect listed endangered and threatened species and that any take of sea turtles resulting from the operation of hopper dredges is covered under the Incidental Take Statement of the 1997 Biological Opinion.
- f) d) Final special conditions established by the Florida Keys National Marine Sanctuary recommended for the Army Corps of Engineers permit.
- e) Two complete sets of construction plans and specification for the proposed activity. The plans shall include the following:
 - i) Plan views of the proposed activity depicting the mean high-water line any easement boundary, or the erosion control line, within the area of influence of the proposed activity. Identify the boundaries of significant geographical features (e.g., channels, shoals) and natural communities (e.g., submerged grass beds, hardbottom, or mangroves) within the area of influence of the activity.
 - ii) A sufficient number of elevation views of the proposed activity depicting the mean high-water line, any easement boundary, and the erosion control line, within the area of influence of the proposed activity. Identify the boundaries of significant geographical features and natural communities in the area of influence of the proposed activity.
 - iii) Details of construction, including materials and general construction procedures and equipment to be used (e.g., construction access, dredging method, dredged material containment, pipeline location).
 - iv) The Project Plans and Specifications will include applicable conditions contained in Attachment I. Added
- f) ~~Plans for dredging and stockpiling sand dredged from the south end of the channel separately from the rest of the dredged material.~~
- g) f) Pipeline route to and from disposal area overlaid on resource survey map.

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- g) Reasonable assurance that the upland disposal area on Fleming Key will not cause turbidity through groundwater infiltration as a result of tidal pumping action.
 - h) Results of geotechnical explorations on the upland at Fleming Key.
 - j) Design details, locations and drawings describing the upland dredged material containment plan on Fleming Key.
 - g) j) Design details, locations, methodology and drawings of the structures proposed to contain turbidity control measures for return water flow from the upland containment site on Fleming Key within the western Rockland Key pit.
 - k) Plans and specifications for the mitigation plan as agreed upon by the resource agencies involved in the project (FKNMS, FDEP, Corps, Navy) to include methodology and standards, timeline and schedules, mitigation goals and success criteria, employed technologies, critical elements and tasks, assignment of responsibilities and shared resources involved.
- 2) The permittee shall hold and save the Department harmless as authorized by law from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the permit.
- 3) If historical or archaeological artifacts, such as, but not limited to, Indian canoes, arrow heads, pottery or physical remains, are discovered at any time within the project site, the permittee shall immediately stop all activities which disturb the soil and contact the Department and the Bureau of Historic Preservation, Division of Historical Resources, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250.
- 4) The permittee shall conduct a pre-construction conference with all contractors, the engineer of record, the FKNMS, and a representative of the Department's Bureau of Beaches & Wetland Resources to establish an understanding among the parties as to the items specified in the specific and general conditions of the permit. The pre-construction conference will be held at least 20 days prior to construction activities. The permittee shall provide a minimum of 10 days advance written notification to the following offices advising of the date, time and location of the pre-construction conference:

DEP, Beaches and Wetland Resources,
3900 Commonwealth Boulevard, MS 300
Tallahassee, Florida 32399-3000
phone: (850) 487-4471

DEP, South District Office
2295 Victoria Ave, #364
Ft. Myers, Florida 33901-3881
(239) 332-6975

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Florida Keys National Marine Sanctuary
216 Ann Street
Key West, FL 33040-6603
(305) 292-0311

Florida Keys National Marine Sanctuary
P.O. Box 1083
Key Largo, FL 33037
(305) 852-7717 x 27

- ~~5) Beach compatible sand shall be stored separately from the rest of the dredged material on the Rockland Key upland containment site. All of this sand shall be reserved for State use in beach nourishment projects for up to two (2) years at no cost to the State.~~
- 6) 5) Sediment and turbidity shall be controlled during all construction and dredged material disposal activities to contain suspended sediment within the approved work areas. The permittee shall control sediment runoff from the upland containment site ~~and rock pit disposal sites~~ into the marine ~~and wetland~~ environment and comply with the State's water quality standard for turbidity in Outstanding Florida Waters. Flocculants are not authorized and may not be used without a minor modification to this permit.
- 7) 6) No work shall be conducted under this permit / water quality certification until and unless the Department issues a Final Order of Variance (File No. 0207625-003-VE) from Rule 62-4.244(5)(c), F.A.C. to establish a temporary mixing zone as described below.

MONITORING REQUIRED:

Flemming Key Disposal Site:

Location: _____

Background: At mid-depth, at a site with an overall depth similar to the compliance site, at least 300 meters upcurrent from the discharge point and clearly outside the influence of any artificially generated turbidity.

Compliance: At mid-depth, no more than 150 meters downcurrent from the discharge point or at the edge of any seagrass beds or coral/sponge communities (whichever is closer) within the densest portion of any visible turbidity plume. At night, when return water from the upland disposal site is discharged, turbidity shall be monitored at pre-established sites where the resources are within 150 meters of the discharge.

Frequency: Twice daily at least 4 hours apart during all disposal operations at Fleming Key disposal site.

Dredge Site (edge of mixing zone):

Location: _____

Background: At mid-depth, at least 300 meters upcurrent from the dredge or discharge point and clearly outside the influence of any artificially generated turbidity.

Compliance 1: At mid-depth, within the dredged harbor or channel, no more than 1500 meters downcurrent from the dredge or discharge point within the densest portion of any visible turbidity plume.

and

Compliance 2: At mid-depth, on both sides of the dredge, perpendicular to the channel or (when dredging in the harbor) perpendicular to the direction of flow, no more than 300 meters from the dredge or discharge point, within the densest portion of any turbidity plume that may be present.

Frequency: Every two hours.

The compliance locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals turbidity levels at the compliance site in excess of the turbidity level at the corresponding background site (i.e., 0 NTUs above background), construction activities shall cease immediately and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any such occurrence shall also be immediately reported to the DEP South District office in Marathon.

Dredge Site (within the mixing zone):

Location: _____

Background: At mid-depth, at least 300 meters upcurrent from the dredge or discharge point and clearly outside the influence of any artificially generated turbidity.

Compliance: At mid-depth, at the nearest edge of any seagrass beds or coral/sponge communities downcurrent from the dredge or discharge point, within the densest portion of any visible turbidity plume.

- In Truman Harbor, Cut C, Cut C Widener and Turning Basin, the compliance sites shall be at least 100 meters from the dredge or discharge point.
- In Cut B and south the compliance sites shall be at least 50 meters from the dredge or discharge point.

Frequency: Every two hours, or more frequently as stated below.

If monitoring reveals turbidity levels at the compliance site (within the mixing zone) in excess of 29 NTUs above background, **construction activities shall cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels.

If the turbidity levels are between 15 and 29 NTUs above background, monitoring frequency shall increase to every 15 minutes. If turbidity remains stable or declines, continue to monitor every 15 minutes. If turbidity:

- 1) increases by 2 NTUs or more for three successive sampling events at the accelerated schedule (retests);
- 2) remains 15 NTUs or more above background at the 4th retest; or
- 3) has not returned to background at the end of 3 hours;

construction activities shall cease immediately and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any such occurrence shall also be immediately reported to the DEP South District office in Marathon.

Turbidity monitoring data shall be presented in graphical form using media such as GIS, AutoCAD, etc. A rectified aerial photograph of the project area should make up the graphical background and resource areas of concern shall be identified. All turbidity monitoring data points shall be plotted in planview and be color coded to indicate the range of magnitude of the NTU readings (i.e. 0 = green; 0 to 15 = yellow; 15 to 29 = red; >29 white). The position of the dredge shall also be indicated along with the limits of the mixing zone as described above. Tidal stage and direction shall be indicated.

All monitoring data shall be submitted within one week of analysis with documents containing the following information: (1) permit number; (2) dates of sampling and analysis; (3) a statement describing the methods used in collection, handling, storage and analysis of the samples; (4) a map indicating the sampling locations; (5) a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data.

Monitoring reports shall also include the following information for each sample that is taken:

- (a) time of day samples taken;
- (b) depth of water body;
- (c) depth of sample;
- (d) antecedent weather conditions;

- (e) tidal stage and direction of flow; and
- (f) wind direction and velocity.

Monitoring reports shall be submitted to the Bureau of Beaches and Wetland Resource in Tallahassee and to the DEP South District office. Failure to submit reports in a timely manner constitutes grounds for revocation of the permit. When submitting this information to the DEP, please clearly include, at the top of each page or as a cover page to the submittal: "This information is provided in partial fulfillment of the monitoring requirements in Permit No. 0207625-002-EM, Key West Maintenance Dredging Project."

~~Water Quality—Turbidity—Nephelometric Turbidity Units (NTUs)~~

~~Frequency:—Twice daily at least 4 hours apart during all dredging and disposal operations. However, when the mixing zone is reduced to less than 150 meters due to the proximity of resources identified by the FKNMS, turbidity readings should be taken every two hours until the resource area is no longer within the 150 meter of the construction site.~~

~~Dredge Site:~~

~~Location:—Background:—At mid-depth, at least 300 meters upcurrent from the dredge or discharge point and clearly outside the influence of any turbidity generated by the project.~~

~~Compliance:—At mid-depth, no more than 150 meters downcurrent from the dredge or discharge point or at the edge of any seagrass beds or coral communities (whichever is closer) within the densest portion of any visible turbidity plume.~~

~~Disposal Site:~~

~~Location:—Background:—At mid-depth, at an overall depth similar to the compliance site, at least 300 meters upcurrent from the discharge point and clearly outside the influence of any turbidity generated by the project.~~

~~Compliance:—At mid-depth, no more than 150 meters downcurrent from the discharge point or at the edge of any seagrass beds or coral communities (whichever is closer) within the densest portion of any visible turbidity plume.~~

~~Construction Sites—Rockland Key:~~

~~Frequency:—Twice daily at least 4 hours apart during all construction activities involving earth-work operations. However, when the mixing zone is reduced to less than~~

~~150 meters due to the proximity of resources identified by the FKNMS, turbidity readings should be taken every two hours until the resource area is no longer within the 150 meter of the construction site. When the earth work activities are completed but the disturbed soils have not yet stabilized, turbidity monitoring shall be conducted within a half hour following rain showers.~~

~~Location: Background: At mid depth, at an overall depth similar to the compliance site, at least 300 meters upcurrent from the in-water construction site or the point where runoff from an upland construction site enters the waterbody, clearly outside the influence of any turbidity generated by the project.~~

~~Compliance: At mid depth, no more than 150 meters downcurrent from the in-water construction site or the point where runoff from an upland construction site enters the waterbody or at the edge of any seagrass beds or coral communities (whichever is closer) within the densest portion of any visible turbidity plume.~~

~~All monitoring data shall be submitted within one week of analysis with documents containing the following information: (1) permit number; (2) dates of sampling and analysis; (3) a statement describing the methods used in collection, handling, storage and analysis of the samples; (4) a map indicating the sampling locations; (5) a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data.~~

~~Monitoring reports shall also include the following information for each sample that is taken:~~

- ~~(a) time of day samples taken;~~
- ~~(b) depth of water body;~~
- ~~(c) depth of sample;~~
- ~~(d) antecedent weather conditions;~~
- ~~(e) tidal stage and direction of flow; and~~
- ~~(f) wind direction and velocity.~~

~~The compliance locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals turbidity levels at the compliance site in excess of the turbidity level at the corresponding background site, construction activities shall cease immediately and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any such occurrence shall also be immediately reported to the DEP South District office in Key West.~~

~~Monitoring reports shall be submitted to the Bureau of Beaches and Wetland Resource in Tallahassee and to the DEP South District office. Failure to submit reports in a timely manner~~

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~~constitutes grounds for revocation of the permit. When submitting this information to the DEP, please clearly include, at the top of each page or as a cover page to the submittal: "This information is provided in partial fulfillment of the monitoring requirements in Permit No. 0207625-001-EI, Key West Maintenance Dredging Project."~~

Executed in Tallahassee, Florida.

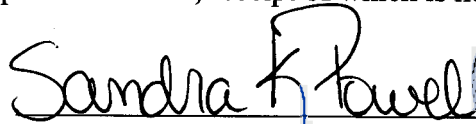

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Michael W. Sole
Bureau of Beaches and Wetland Resources

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

 
Deputy Clerk Date

Attachments:

Permit Drawings (14 pages)
Additional Provisions (6 pages)
Standard Manatee Protection Conditions (2 pages)

Copies furnished to:

Captain Cotton, Department of the Navy, Key West
Will Sloger, Department of the Navy
Fritz Wettstein, DEP South District, Key West
Tania McMillan, DEP South District, Marathon

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Billy Causey, NOAA FKNMS, Marathon

Lauri MacLaughlin, NOAA FKNMS, Key Largo

Mark Latch, DEP Rec & Parks, Tallahassee

Marshall Flake, DEP Rec & Parks, Tallahassee

Mark Knapke, DEP Rec & Parks, Ft. Zachary Taylor

David Boyd, DEP Rec & Parks, South District, Largo

Mark Miller DEP, Office of General Counsel

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John Studt, USACOE, South District

Paden Woodruff, DEP BBWR

Ralph Clark, DEP BBWR

Vladimir Kosmynin, DEP BBWR

Melisa Reiter, PBS&J

Jennifer Brown, DEP BBWR

Department of Community Affairs

File



Department of Environmental Protection

Jeb Bush
Governor

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

David B. Struhs
Secretary

CERTIFIED - RETURN RECEIPT REQUESTED

September 29, 2003

Captain Lawrence S. Cotton
U.S. Dept. of the Navy, CO
P.O. Box 9001
Officer, Naval Air Facility
Key West, FL 33040-9001

c/o James M. Hudgens
CZR Incorporated, President
1061 East Indiantown Road, Suite 100
Jupiter, FL 33477-5143

Permit Modification No. 0207625-004-EM
Permit No. 027625-002-EM, Monroe County
Key West Maintenance Dredging Project

Dear Mr. Hudgens:

Your request to modify permit no. 0207625-002-EM has been received and reviewed by Department staff. The proposed permit modification addresses four minor changes to the previous major permit modification number 0207625-002-EM.

The first item is a minor correction in the project description involving the depth of advanced maintenance dredging, changing it from 3 feet to 2 feet. The second item relates to the attachment included in the modification 0207625-002-EM. The attachment represents the Florida Keys National Marine Sanctuary's (FKNMS) recommended special conditions for the Army Corps of Engineers (Corps) permit number 20030203 (LP-PK). However, the Corps revised their permit as it relates to water quality monitoring in special condition number 5. To reflect the change in the Corps' permit, the DEP permit modification includes the revised attachment. Items two and three of this modification include clarified, revised language in the water quality monitoring section of the permit.

A variance for an expanded mixing zone (# 0207625-003-EV) was issued to the Navy on August

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28, 2003. The Navy demonstrated that it would be impossible to meet the turbidity standard of zero (0) NTUs above background at 150 meter. Although the new mixing zone will unavoidably encompass some areas of submerged resources, a secondary standard of 29 NTUs above background will be used **within the mixing zone** to monitor turbidity at the edge of those resource areas. The regular standard of zero (0) NTUs above background will continue to apply at the edge of the expanded mixing zone. This minor permit modification revises and clarifies the limits of the expanded mixing zone on the sides of the channel and inside Truman Harbor.

The project description shall be revised as follows (~~strikethroughs~~ are deletions, underlines are additions):

PROJECT DESCRIPTION:

The project entails maintenance dredging of the Federal navigation channel at Key West. The dredge areas include the main ship channel from its southern terminus, extending north and including cuts A, B, and C, the channel widener at cut C known as the turning basin, and Truman Harbor. The maintenance dredging is to a depth of -34 MLW plus 32 feet advance maintenance (except for Truman Harbor where the advance maintenance will be limited to 1 foot), plus 1 foot allowable overdepth. The resulting dredged material volume will be approximately 1,000,000 cubic yards. The dredged material will be placed in two disposal areas. All loose material in Truman Harbor and any material not suitable for ocean disposal will be pumped via pipeline to an upland disposal area on Fleming Key. Dredged material consisting of rock and sand will be deposited outside of State waters in an Offshore Dredged Material Disposal Site (ODMDS) that has been approved by the U.S. Environmental Protection Agency (EPA).

The monitoring requirements shall be revised as follows (~~strikethroughs~~ are deletions, underlines are additions):

MONITORING REQUIRED:

Water Quality Standard: Turbidity in Nephelometric Turbidity Units (NTUs)

Flemming Key Disposal Site:

Location:

Background: At mid-depth, at an overall depth similar to the compliance site, at least 300 meters upcurrent from the discharge point and clearly outside the influence of any artificially generated turbidity.

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Compliance: At mid-depth, no more than 150 meters downcurrent from the discharge point or at the edge of any seagrass beds or coral/sponge communities (whichever is closer) within the densest portion of any visible turbidity plume. At night, when return water from the upland disposal site is discharged, turbidity shall be monitored at pre-established sites where the resources are within 150 meters of the discharge.

Frequency: Twice daily at least 4 hours apart during all disposal operations at Fleming Key disposal site.

Dredge Site (edge of mixing zone):

Location:

Background: At mid-depth, at least 300 meters upcurrent from the dredge or discharge point and clearly outside the influence of any artificially generated turbidity.

Compliance for channel dredging: At mid-depth, directly downcurrent from the dredge or discharge point, at the edge of a rectangular mixing zone that extends 300 meters beyond the channel (on each side of the channel) and 1500 meters from the dredge (inside the channel), within the densest portion of any visible turbidity plume. See Diagram 1 (attached).

Compliance for Truman Harbor dredging: At mid-depth, 1500 meters downcurrent from the dredge or discharge point, or

- 10 feet from the shoreline in the downcurrent direction (during an incoming tide),
- at the mouth of the harbor (during an outgoing tide),

whichever is closer to the dredge or discharge point, within the densest portion of any turbidity plume that may be present.

~~Compliance 1: — At mid depth, within the dredged harbor or channel, no more than 1500 meters downcurrent from the dredge or discharge point within the densest portion of any visible turbidity plume.~~

and

~~Compliance 2: — At mid depth, on both sides of the dredge, perpendicular to the channel or (when dredging in the harbor) perpendicular to the direction of~~

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~~flow, no more than 300 meters from the dredge or discharge point, within the densest portion of any turbidity plume that may be present.~~

Frequency: Every two hours.

The compliance locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals turbidity levels at the compliance site in excess of the turbidity level at the corresponding background site (i.e., 0 NTUs above background), **construction activities shall cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any such occurrence shall also be immediately reported to the DEP South District office in Marathon.

Dredge Site (within the mixing zone):

Location:

Background: At mid-depth, at least 300 meters upcurrent from the dredge or discharge point and clearly outside the influence of any artificially generated turbidity.

Compliance: At mid-depth, at the nearest edge of any seagrass beds or coral/sponge communities downcurrent from the dredge or discharge point, within the densest portion of any visible turbidity plume.

- In Truman Harbor, Cut C, Cut C Widener and Turning Basin, the compliance sites shall be at least 100 meters from the dredge or discharge point.
- In Cut B and south the compliance sites shall be at least 50 meters from the dredge or discharge point.

Frequency: Every two hours, or more frequently as stated below.

If monitoring reveals turbidity levels at the compliance site (within the mixing zone) in excess of 29 NTUs above background, **construction activities shall cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels.

If the turbidity levels are between 15 and 29 NTUs above background, monitoring frequency shall increase to every 15 minutes. If turbidity remains stable or declines, continue to monitor every 15 minutes. If turbidity:

- increases by 2 NTUs or more for three successive sampling events at the accelerated schedule (retests);
- 2) remains 15 NTUs or more above background at the 4th retest; or
- 3) has not returned to background at the end of 3 hours;

construction activities shall cease immediately and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any such occurrence shall also be immediately reported to the DEP South District office in Marathon.

Turbidity monitoring data shall be presented in graphical form using media such as GIS, AutoCAD, etc. A rectified aerial photograph of the project area should make up the graphical background and resource areas of concern shall be identified. All turbidity monitoring data points shall be plotted in planview and be color coded to indicate the range of magnitude of the NTU readings (i.e. 0 = green; 0>15 yellow; 15 \square 29 red; >29 white). The position of the dredge shall also be indicated along with the limits of the mixing zone as described above. Tidal stage and direction shall be indicated. A conceptual plan outlining the submittal of the water quality data shall be submitted to the Department for approval.

All monitoring data shall be submitted within one week of analysis with documents containing the following information: (1) permit number; (2) dates of sampling and analysis; (3) a statement describing the methods used in collection, handling, storage and analysis of the samples; (4) a map indicating the sampling locations; (5) a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data.

Monitoring reports shall also include the following information for each sample that is taken:

- (a) time of day samples taken;
- (b) depth of water body;
- (c) depth of sample;
- (d) antecedent weather conditions;
- (e) tidal stage and direction of flow; and
- (f) wind direction and velocity.

Monitoring reports shall be submitted to the Bureau of Beaches and Wetland Resource in Tallahassee and to the DEP South District office. Failure to submit reports in a timely manner constitutes grounds for revocation of the permit. When submitting this information to the DEP, please clearly include, at the top of each page or as a cover page to the submittal: **"This information is provided in partial fulfillment of the monitoring requirements in Permit No. 0207625-001-EI, Key West Maintenance Dredging Project."**

After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality and is expected to be clearly in the public interest. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation, the **permit is hereby modified** as stated above. By copy of this letter and the attached drawings, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **June 17, 2013** expiration date, other Specific or General Conditions of the permit. This letter and the accompanying drawings must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under sections 120.569 and 120.57, Florida Statutes, as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in further modification of the permit or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this permit modification automatically becomes only proposed agency action on the application subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities under this permit modification until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time has expired.

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Under rule 62-110.106(4), Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding judge upon the filing of a motion in compliance with rule 28-106.205, F.A.C.

In accordance with rules 28-106.111(2) and 62-110.106(3)(a)(1), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

Under section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57, F.S.

In accordance with rule 28-106.201, F.A.C., a petition that disputes the material facts on which the Department's action is based must contain the following information:

The name and address of each agency affected and each agency's file or identification number, if known;

The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an

explanation of how the petitioner's substantial interests are or will be affected by the agency determination;

A statement of when and how the petitioner received notice of the agency decision;

A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;

- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301, F.A.C. Under sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under section 120.68, F.S., by the filing of a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

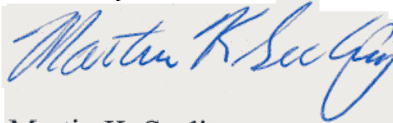
When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in rule 62-110.106, F.A.C., a person may request a copy of the agency action. The Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice. The Department does not require notice of this agency action to be published. However, the applicant may elect to publish notice as prescribed in rule

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62-110.106, F.A.C., which constitutes notice to the public and establishes a time period for submittal of any petition.

If you have any questions regarding this matter, please contact me at the letterhead address or by telephone at (850) 487-4471, ext. 104.

Sincerely,



Martin K. Seeling
Environmental Administrator
Bureau of Beaches and Wetland Resources

Attachments: Diagram 1
Revised Additional Provisions

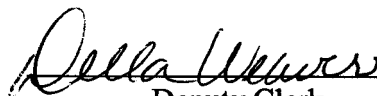
cc:

Captain Cotton, Department of the Navy, Key West
Brock Durig, Department of the Navy
Will Sloger, Department of the Navy
Tania McMillan, DEP South District, Marathon
Billy Causey, NOAA FKNMS, Marathon
Lauri MacLaughlin, NOAA FKNMS, Key Largo
Mark Latch, DEP Rec & Parks, Tallahassee
Marshall Flake, DEP Rec & Parks, Tallahassee
Mark Knapke, DEP Rec & Parks, Ft. Zachary Taylor
David Boyd, DEP Rec & Parks, South District, Largo

Mark Miller DEP, Office of General Counsel
Dianne Griffin, USACE, Jacksonville
John Studt, USACOE, South District
Paden Woodruff, DEP BBWR
Ralph Clark, DEP BBWR
Vladimir Kosmynin, DEP BBWR
Melisa Reiter, PBS&J
Jennifer Brown, DEP BBWR
Department of Community Affairs
File

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

 9/30/03
Deputy Clerk Date



Department of Environmental Protection

Jeb Bush
Governor

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Colleen Castille
Secretary

CERTIFIED - RETURN RECEIPT REQUESTED

May 21, 2004

Lieutenant Commander H.C. Phillips
Department of the Navy
Naval Air Station
P.O. Box 9001
Key West, FL 33040-9001

Permit Modification No. 0207625-005-EM
Permit No. 0207625-002-EM, Monroe County
Key West Maintenance Dredging Project

Dear Mr. Phillips:

Your request to modify permit number 0207625-002-EM (as previously modified in permit modification number 0207625-004-EM) has been received and reviewed by Department staff. The changes include a margin of error for turbidity monitoring this is inherent in the proposed meters, removal of references to in water pipeline placement and revision to the water quality monitoring conditions for Truman Harbor.

The applicant requested additional language be added to the water quality monitoring section of the permit specifying a monitoring instrument margin of error of +/- 2 Nephelometric Turbidity Units (NTU's). Given the complexity of potential turbidity plumes from this project, the close proximity of sensitive resources and the location of the project within Outstanding Florida Waters, the permittee will be using innovative methods for turbidity monitoring. This will include a towed Hydrolab turbidity meter. Since the turbidity standard in an OFW is zero NTUs above background, minor deviations associated with meter accuracy could shut down a project that is actually in compliance with the turbidity standard. Therefore, it is reasonable to account for some margin of error associated with the sampling method.

However, since we cannot change the actual turbidity standard, the addition of a margin of error for monitoring will not be included in the permit language. Rather, we will try to address the margin of error in the Turbidity Monitoring Plan. Please submit an updated plan, including justification for selecting the specified margin of error, for the Department's review and

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approval. Further, the Navy has agreed that the required submittal of weekly water quality monitoring data will include a statement of instrument type and margin of error. This will ensure, upon review of the monitoring data, that an apparent exceedance of the water quality standard is not necessarily a permit violation.

The applicant also requested an update to the project description and permit conditions, removing the reference to a submerged pipeline for dredged material disposal operations. Originally, the applicant proposed pumping of the dredged material via submerged pipeline to an upland disposal area. The project has been revised such that no submerged pipeline will be used. Instead, dredged material will be transported by barge and pumped directly to the upland, eliminating the need for submerged pipeline. The proposed change to the dredged material disposal methods modification is expected to significantly reduce the potential for adverse impacts to submerged resources.

Finally, the applicant requested revision of the water quality monitoring conditions for Truman Harbor, a Class III waterbody, which is not classified as Outstanding Florida Waters (OFW). The applicant applied for and received a Variance for an expanded mixing zone of 1,500 meters. The water quality monitoring condition allows for a mixing zone that exceeds the dimensions of the harbor, so there is no room within the harbor to conduct the required monitoring. The proposed change provides for turbidity compliance stations to be located outside of the harbor, but still within the maximum mixing zone authorized in the variance (i.e., 1500 meters down current from the dredge). Although the harbor is not part of the Outstanding Florida Waters, the mixing zone will extend beyond the harbor into the OFW, so the compliance standard will be zero (0) NTUs above background.

Although turbidity **compliance** monitoring will not be conducted within the harbor, turbidity sampling will be conducted in the harbor to monitor the performance of the project. Also, biological monitoring stations will be established within the harbor to track and prevent sedimentation damage to significant resources.

The project description shall be revised as follows (~~strikethroughs~~ are deletions, underlines are additions):

PROJECT DESCRIPTION:

The project entails maintenance dredging of the Federal navigation channel at Key West. The dredge areas include the main ship channel from its southern terminus, extending north and including cuts A, B, and C, the channel widener at cut C known as the turning basin, and Truman Harbor. The maintenance dredging is to a depth of -34 MLW plus 2 feet advance maintenance (except for Truman Harbor where the advance maintenance will be limited to 1

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foot), plus 1 foot allowable overdepth. The resulting dredged material volume will be approximately 1,000,000 cubic yards. The dredged material will be placed in two disposal areas. All loose material in Truman Harbor and any material not suitable for ocean disposal will be ~~pumped via pipeline~~ barged to an upland disposal area on Fleming Key, with no return water discharge into surface waters of the State. Dredged material consisting of rock and sand will be deposited outside of State waters in an Offshore Dredged Material Disposal Site (ODMDS) that has been approved by the U.S. Environmental Protection Agency (EPA).

The monitoring requirements shall be revised as follows (~~strikethroughs~~ are deletions, underlines are additions):

MONITORING REQUIRED:

Water Quality Standard: Turbidity in Nephelometric Turbidity Units (NTUs)

Flemming Key Disposal Site:

The permittee shall conduct visual inspections of the Flemming Key Disposal Site to note and correct any turbidity plumes that may be associated with the project. This should include any spills of the dredged material, non-point source runoff or prop wash from the tugs. The inspection log should contain entries at least twice daily, at least 4 hours apart.

Location: _____

_____ ~~Background: At mid depth, at an overall depth similar to the compliance site, at least 300 meters upcurrent from the discharge point and clearly outside the influence of any artificially generated turbidity.~~

_____ ~~Compliance: At mid depth, no more than 150 meters downcurrent from the discharge point or at the edge of any seagrass beds or coral/sponge communities (whichever is closer) within the densest portion of any visible turbidity plume. At night, when return water from the upland disposal site is discharged, turbidity shall be monitored at pre-established sites where the resources are within 150 meters of the discharge.~~

~~Frequency: Twice daily at least 4 hours apart during all disposal operations at Fleming Key disposal site.~~

Dredge Site (edge of mixing zone):

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Location:

Background: At mid-depth, at least 300 meters upcurrent from the dredge or discharge point and clearly outside the influence of any artificially generated turbidity.

Compliance for channel dredging: At mid-depth, directly downcurrent from the dredge or discharge point, at the edge of a rectangular mixing zone that extends 300 meters beyond the channel (on each side of the channel) and 1500 meters from the dredge (inside the channel), within the densest portion of any visible turbidity plume. See Diagram 1 (attached).

Compliance for Truman Harbor dredging: At mid-depth, outside of the harbor, or

- ~~10 feet from the shoreline in the downcurrent direction (during an incoming tide),~~
 - ~~at the mouth of the harbor (during an outgoing tide),~~
- 1500 meters downcurrent from the mouth of the harbor, minus the distance from the dredge to the mouth of the harbor, whichever is closer to the dredge or discharge point, within the densest portion of any turbidity plume that may be present.

Frequency: Every two hours, except when the tidal current is flowing into the harbor.

The compliance locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals turbidity levels at the compliance site in excess of the turbidity level at the corresponding background site (i.e., 0 NTUs above background), **construction activities shall cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any such occurrence shall also be immediately reported to the DEP South District office in Marathon.

Dredge Site (within the mixing zone):

Location:

Background: At mid-depth, at least 300 meters upcurrent from the dredge or discharge point and clearly outside the influence of any artificially generated turbidity.

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Compliance: At mid-depth, at the nearest edge of any seagrass beds or coral/sponge communities downcurrent from the dredge or discharge point, within the densest portion of any visible turbidity plume.

- In ~~Truman Harbor~~, Cut C, Cut C Widener and Turning Basin, the compliance sites shall be at least 100 meters from the dredge or discharge point.
- In Cut B and south the compliance sites shall be at least 50 meters from the dredge or discharge point.
- For Truman Harbor the compliance site shall be on the outside of the harbor, 150 meters downcurrent from the mouth of Truman Harbor or at least 100 meters from the mouth of Truman Harbor at the nearest edge of resources (not attached to manmade structures), whichever is closest to the dredge, within the densest portion of any visible turbidity plume

Frequency: Every two hours, or more frequently as stated below.

If monitoring reveals turbidity levels at the compliance site (within the mixing zone) in excess of 29 NTUs above background, **construction activities shall cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels.

If the turbidity levels are between 15 and 29 NTUs above background, monitoring frequency shall increase to every 15 minutes. If turbidity remains stable or declines, continue to monitor every 15 minutes. If turbidity:

increases by 2 NTUs or more for three successive sampling events at the accelerated schedule (retests);

- 2) remains 15 NTUs or more above background at the 4th retest; or
- 3) has not returned to background at the end of 3 hours;

construction activities shall cease immediately and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any such occurrence shall also be immediately reported to the DEP South District office in Marathon.

Turbidity monitoring data shall be presented in graphical form using media such as GIS, AutoCAD, etc. A rectified aerial photograph of the project area should make up the graphical background and resource areas of concern shall be identified. All turbidity monitoring data points shall be plotted in planview and be color coded to indicate the

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range of magnitude of the NTU readings (i.e. 0 = green; 0>15 yellow; 15 to 29 red; >29 white). The position of the dredge shall also be indicated along with the limits of the mixing zone as described above. Tidal stage and direction shall be indicated. A conceptual plan outlining the submittal of the water quality data shall be submitted to the Department for approval.

All monitoring data shall be submitted within one week of analysis with documents containing the following information: (1) permit number and project name; (2) dates of sampling and analysis; (3) a statement describing the methods used in collection, handling, storage and analysis of the samples; (4) a map indicating the sampling locations; (5) a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data.

Monitoring reports shall also include the following information for each sample that is taken:

- (a) time of day samples taken;
- (b) depth of water body;
- (c) depth of sample;
- (d) antecedent weather conditions;
- (e) tidal stage and direction of flow; and
- (f) wind direction and velocity.

Monitoring reports shall be submitted to the JCP compliance officer, Bureau of Beaches and Coastal Systems ~~Wetland Resource~~ in Tallahassee and to the DEP South District office. Failure to submit reports in a timely manner constitutes grounds for revocation of the permit. When submitting this information to the DEP, please clearly include, at the top of each page or as a cover page to the submittal: **"This information is provided in partial fulfillment of the monitoring requirements in Permit No. 0207625-001-EI, Key West Maintenance Dredging Project."**

After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality and is expected to be clearly in the public interest. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation, the **permit is hereby modified** as stated above. By copy of this letter and the attached drawings, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **June 17, 2013** expiration date, other Specific or General

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Conditions of the permit. This letter and the accompanying drawings must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under sections 120.569 and 120.57, Florida Statutes, as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in further modification of the permit or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this permit modification automatically becomes only proposed agency action on the application subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities under this permit modification until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time has expired.

Under rule 62-110.106(4), Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding judge upon the filing of a motion in compliance with rule 28-106.205, F.A.C.

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In accordance with rules 28-106.111(2) and 62-110.106(3)(a)(1), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

Under section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57, F.S.

In accordance with rule 28-106.201, F.A.C., a petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

Notice of Permit Modification
Key West Maintenance Dredging Project
Permit Modification No. 0207625-005-EM
Page 9 of 10

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301, F.A.C. Under sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

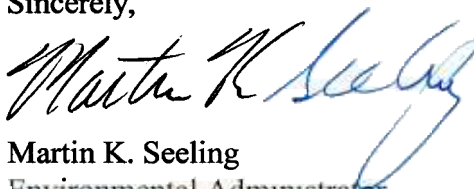
This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under section 120.68, F.S., by the filing of a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in rule 62-110.106, F.A.C., a person may request a copy of the agency action. The Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice. The Department does not require notice of this agency action to be published. However, the applicant may elect to publish notice as prescribed in rule 62-110.106, F.A.C., which constitutes notice to the public and establishes a time period for submittal of any petition.

If you have any questions regarding this matter, please contact me at the letterhead address or by telephone at (850) 487-4471, ext. 104.

Sincerely,



Martin K. Seeling
Environmental Administrator
Bureau of Beaches and Coastal Systems

cc:

Ed Barham, Department of the Navy, Key West
Brock Durig, Department of the Navy, Jacksonville
Will Sloger, Department of the Navy

Mark Miller DEP, Office of General Counsel
Dianne Griffin, USACE, Jacksonville
John Studt, USACOE, South District

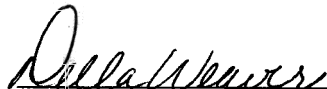
Notice of Permit Modification
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Gus Rios, DEP South District, Marathon
Tania McMillan, DEP South District, Marathon
Billy Causey, NOAA, FKNMS, Marathon
Lauri MacLaughlin, NOAA, FKNMS, Key Largo
Mark Latch, DEP Rec & Parks, Tallahassee

Paul Kruger, USACOE, Jacksonville
Jennifer Brown, DEP BBCS
Vladimir Kosmynin, DEP BBCS
Marshall Flake, DEP Rec & Parks, Tallahassee
File

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated
Department Clerk, receipt of which is hereby acknowledged.

 5/21/04
Deputy Clerk Date



Jeb Bush
Governor

Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Colleen M. Castille
Secretary

CERTIFIED - RETURN RECEIPT REQUESTED

January 11, 2005

Captain J.K. Scholl
Commanding Officer
Department of the Navy
Naval Air Station
P.O. Box 9001
Key West, FL 33040-9001

and

City of Key West
c/o Sandy Walters
Sandra Walters Consultants, Inc.
6410 Fifth Street, Suite 3
Key West, FL 33040

Permit Modification No. 0207625-006-EM
Permit No. 0207625-002-EM, Monroe County
Key West Maintenance Dredging Project

Dear Captain Scholl:

Your request to modify Permit No. 0207625-002-EM has been received and reviewed by Department staff. The proposed permit modification is to expand the dredging area to include the Mallory Dock berth and to allow the City of Key West to be added as a co-permittee specifically for, and limited to, this additional work.

The request to add the Mallory Dock area to the ongoing maintenance dredging activities was made by the City of Key West to the Navy. The City has requested to be added as a co-permittee, as the City will solely assume all responsibility, liability and costs associated with the dredging of the Mallory Dock area. Responsibility for the previously authorized work areas under this permit and subsequent modifications will remain solely with the U.S. Navy.

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The City of Key West requested the ability to work under the Navy's permit for the maintenance dredging of the Key West Main Ship Channel and Truman Harbor in order to dredge a relatively small area fronting Mallory Dock. This will provide the City with the ability to conduct the desired maintenance dredging utilizing equipment, disposal area and the permit currently available through the Navy project.

The Mallory Dock area is relatively shallow in comparison to the ship traffic in the area, which results in generation of turbidity plumes during ship movement in the area. The Department has reviewed the potential for environmental impacts from the proposed work. Potential for impacts generated from ship traffic turbidity plumes is likely to exceed any potential impacts associated with dredging the area to depths more suitable for vessel traffic.

Benthic resources are found along the Mallory Dock support structures. The applicant has proposed a 30 foot buffer from the shoreline/bulkhead and a 15 foot buffer from the T-head dock in an effort to minimize potential for impacts to the resources found on the support structures. Additionally, the proposed additional dredge area contains scattered anthropogenic debris that will be removed and properly disposed of during the dredging project, which is considered to be environmentally beneficial.

The proposed dredging at Mallory Dock is anticipated to be completed within two or three days. It is not expected that elevated turbidity resulting from dredging will have any greater impacts on coral communities in the area than that which occurs during vessel ingress and egress. Once the maintenance dredging at Mallory Dock is complete, turbidity resulting from vessel activity should be greatly reduced.

The dredged material will be placed in the previously authorized disposal site on Fleming Key. All non-earthen debris excavated from the dredge area will be properly disposed of in an appropriate disposal facility and not placed within the approved Fleming Key disposal site.

The City of Key West will be responsible for meeting all of the conditions and obligations of Permit No. 0207625-002-EM and subsequent modifications as they apply to the proposed additional dredge area adjacent to Mallory Dock. The Navy will remain responsible for all permit conditions and obligations associated with the previously authorized work areas. As the dredging at Mallory Dock is expected to be completed in a short time period, the construction phase of this modification will expire upon completion of the work or by February 28, 2005, whichever comes first. Thereafter, the previously authorized project and expiration dates shall apply to the work areas as authorized under the Navy's permit and modifications.

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The project description shall be revised as follows ~~XX~~ (~~striketroughs~~ are deletions, underlines are additions):

PROJECT DESCRIPTION:

The project entails maintenance dredging of the Federal navigation channel at Key West. The dredge areas include the main ship channel from its southern terminus, extending north and including cuts A, B, and C, the channel widener at cut C known as the turning basin, ~~and Truman Harbor, and~~ the area adjacent to Mallory Dock. The maintenance dredging is to a depth of -34 MLW plus 2 feet advance maintenance (except for Truman Harbor where the advance maintenance will be limited to 1 foot, plus 1 foot allowable overdepth. The area adjacent to Mallory Dock will be dredged to a depth of -30 feet at Mean Low Water, plus 2 feet advance maintenance and 1 foot over dredge. The resulting dredged material volume will be approximately ~~1,000,000~~ 1,007,500 cubic yards. The dredged material will be placed in two disposal areas. All loose material in Truman Harbor and any material not suitable for ocean disposal will be barged to an upland disposal area on Fleming Key, with no return water discharge into surface waters of the State. Dredged material consisting of rock and sand will be deposited outside of State waters in an Offshore Dredged Material Disposal Site (ODMDS) that has been approved by the U.S. Environmental Protection Agency (EPA).

The project location shall be revised as follows (~~striketroughs~~ are deletions, underlines are additions):

PROJECT LOCATION:

The activities are located at Key West and Fleming Key in Monroe County. Activities within the Truman Annex Harbor are located in Section 1, Range 24E, Township 68S and Section 6, Range 2E, Township 68S. Activities at Fleming Key are located at Sections 30 and 31, Range 25E, Township 67S. Activities at Mallory Dock are located at Section 6, Range 25E, Township 68S and Section 31, Range 25E, 67S. All activities are located along the Straits of Florida, within the Florida Keys National Marine Sanctuary, Class III Waters, Outstanding Florida Waters.

The specific conditions shall be revised as follows (~~striketroughs~~ are deletions, underlines are additions):

SPECIFIC CONDITIONS:

7) The City of Key West is added to this permit as co-permittee for, and limited to, all work associated with the dredging at Mallory Dock. The City of Key West shall solely assume all costs, liability and meet all requirements of this permit for work in the above mentioned area. With the initiation of any dredging work in the area of Mallory Dock the City acknowledges its obligation to meet all the requirements of this permit, subsequent

modifications and all permit attachments, including the special conditions provided for by the Army Corps of Engineers permit.

8) During dredging activities at Mallory Dock, any non-earthen (anthropogenic) debris excavated or removed from the dredge area shall be properly disposed of in the appropriate upland disposal facilities.

9) During dredging activities at Mallory Dock, the permittee shall maintain no-dredge buffers, which measure 30 feet from the main Mallory Dock structure and 15 feet from the T-dock structure(s) as shown on the attached drawings.

After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality and is expected to be clearly in the public interest. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation and is expected to be of environmental benefit, the **permit is hereby modified** as stated above. By copy of this letter and the attached drawings, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **June 17, 2013** expiration date, other Specific or General Conditions, or monitoring requirements of the permit. This letter and the accompanying drawings must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes, as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in further modification of the permit or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this permit modification automatically becomes only proposed agency action on the application subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities under this permit modification until the

Notice of Permit Modification
Maintenance Dredging of Mallory Dock
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deadlines noted below for filing a petition for an administrative hearing or request for an extension of time has expired.

Under Rule 62-110.106(4), Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding judge upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S.

In accordance with Rule 28-106.201, F.A.C., a petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;

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- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C. Under Sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in Rule 62-110.106, F.A.C., a person may request a copy of the agency action. The Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice. The Department does not require notice of this agency

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action to be published. However, the applicant may elect to publish notice as prescribed in Rule 62-110.106, F.A.C., which constitutes notice to the public and establishes a time period for submittal of any petition.

If you have any questions regarding this matter, please contact me at the letterhead address (add Mail Station 300) or by telephone at (850) 487-4471, ext. 104.

Sincerely,



Martin K. Seeling
Environmental Administrator
Bureau of Beaches & Coastal Systems

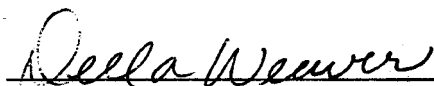

MKS/sr

Attached: project drawings (4 pages)

cc: Brock Durig, CNRSE, Jacksonville
Ed Barham, NAS Key West
Gus Rios, DEP, South District, Marathon
Tania McMillan, DEP, South District, Marathon
Mark Taynton DEP, BBCS
Dr. Robbin Trindell, FWC, Imperiled Species Management Section
FWC-Division of Law Enforcement
U. S. Army Corps of Engineers, Jacksonville
(USACOE File No. 200300203 (LP-PK) Mod #5)
Paul Kruger, ACOE Regulatory Division, South Permits Branch
Julio Avel, City Manager, City of Key West
Lauri MacLaughlin, FKNMS, Key West
Anne McCarthy, FKNMS, Upper Keys Region
Audra Livergood, NMFS
BBCS Permit File

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

 
Debra Weaver Date
Deputy Clerk



Jeb Bush
Governor

Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Colleen M. Castille
Secretary

CERTIFIED - RETURN RECEIPT REQUESTED

March 2, 2006

Captain J.K. Scholl
Commanding Officer
Department of the Navy
Naval Air Station
P.O. Box 9001
Key West, FL 33040-9001

and

City of Key West
c/o Sandy Walters
Sandra Walters Consultants, Inc.
6410 Fifth Street, Suite 3
Key West, FL 33040

Permit Modification No. 0207625-007-EM
Permit No. 0207625-002-EM, Monroe County
Key West Maintenance Dredging Project, Mallory Dock Area

Dear Captain Scholl:

Your request to modify Permit No. 0207625-002-EM (as previously revised in Permit Modification No. 0207625-006-EM) has been received and reviewed by Department staff. The proposed permit modification is for a time extension for the previously authorized Mallory Dock dredging and also to change the dredged material disposal area from the upland disposal site on Fleming Key to the Offshore Dredged Material Disposal Site (ODMDS).

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Notice of Permit Modification
Maintenance Dredging of Mallory Dock
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On June 17, 2003, the Department issued Environmental Resource Permit (ERP) Number 0207625-001-EI to the U.S. Navy for the maintenance dredging of the Key West Main Ship Channel and Truman Harbor.

On August 12, 2003, the Department issued Permit Modification Number 0207625-002-EM to the U.S. Navy authorizing a change in the dredged material disposal plan. The new disposal plan removed several miles of proposed submerged pipeline from the seafloor throughout the Florida Keys National Marine Sanctuary providing material transport alternatives that were preferred environmentally and logistically.

On August 28, 2003, the Department issued Variance Number 0207625-003-EV to the U.S. Navy, pursuant to Section 403.201(1), Florida Statutes (F.S.), and Section 62-110.104, Florida Administrative Code (F.A.C.), to authorize the requested relief from Rule 62-4.244(5)(c), F.A.C., to establish a temporary mixing zone greater than 150 meters.

On September 26, 2003, the Department issued Modification Number 0207625-004-EM to the U.S. Navy in order to make four minor corrections to the permit (as previously modified). On May 21, 2004, the Department issued modification 0207625-005-EM to the U.S. Navy to remove references to in-water pipeline placement and revise water quality monitoring conditions for dredging activities within Truman Harbor.

On January 11, 2005, the Department issued modification 0207625-006-EM to the U.S. Navy and the City of Key West. The modification authorized the addition of the City of Key West as a co-permittee in order to expand the dredging area to specifically include the Mallory Dock area to the current maintenance dredging activities. The dredging of Mallory Dock was anticipated to be completed in a short time frame after which the City would no longer remain a co-permittee with the Navy. As such, an expiration date was stated in the modification for the work associated with the dredging at Mallory Dock.

Project Justification

On February 28, 2005, the City of Key West requested a modification to 0207625-006-EM for a time extension for the dredging of the Mallory Dock area and a change in the dredged material disposal site.

During dredging of the Mallory Dock portion of the project the dredge encountered material more compact than expected. About 2,200 of the 7,500 cubic yards of material to be dredged had been removed at the time work had to stop. The City requested the time extension through the remainder of the calendar year in order to maintain the flexibility of keeping with the U.S. Navy's schedule. The application wasn't completed until December 21, 2005, because the City was waiting to receive EPA approval for use of the offshore disposal site.

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Staff Assessment

The Mallory Dock area is relatively shallow in comparison to ship traffic in the area, which results in generation of turbidity plumes from propeller wash during ship movement in the area. The Department has reviewed the potential for environmental impacts from the proposed work. Potential for impacts generated from ship traffic turbidity plumes is likely to exceed any potential impacts associated with dredging the area to depths more suitable for vessel traffic.

Benthic resources are found along the Mallory Dock support structures. The applicant has proposed a 30 foot buffer from the shoreline/bulkhead and a 15 foot buffer from the T-head dock in an effort to minimize potential for impacts to the resources found on the support structures. Additionally, the proposed additional dredge area contains scattered anthropogenic debris that will be removed and properly disposed of during the dredging project, which is considered to be environmentally beneficial.

The proposed dredging at Mallory Dock is anticipated to be completed within three to five days. It is not expected that elevated turbidity resulting from dredging will have any greater impacts on coral communities in the area than that which occurs during vessel ingress and egress. Once the maintenance dredging at Mallory Dock is complete, turbidity resulting from vessel activity should be greatly reduced.

The dredged material will be placed in the ODMDS that was approved for use by certain areas (materials) found within Truman Harbor and the Main Ship Channel. The City sought and received approval from the Environmental Protection Agency (EPA) for use of the ODMDS as it is located outside of state waters in federal waters. As before, all non-earthen debris excavated from the dredge area will be properly disposed of in an appropriate disposal facility.

The City of Key West will be responsible for meeting all of the conditions and obligations of Permit No. 0207625-002-EM and subsequent modifications as they apply to the proposed additional dredge area adjacent to Mallory Dock. The Navy will remain responsible for all permit conditions and obligations associated with the previously authorized work areas.

The requirements of Permit Modification No. 0207625-006-EM, which was the original authorization for dredging at Mallory Dock, shall be revised as follows (~~striketroughs~~ are deletions, underlines are additions):

The dredged material will be placed in the previously authorized Offshore Dredged Material Disposal Site ~~disposal site on Fleming Key~~. All non-earthen debris excavated from the dredge area will be properly disposed of in an appropriate disposal facility and not placed within the approved Fleming Key disposal site.

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As the dredging at Mallory Dock is expected to be completed in a short time period, the construction phase of this modification will expire upon completion of the work ~~or by February 28, 2005, whichever comes first~~. Thereafter, the previously authorized project and expiration dates shall apply to the work areas as authorized under the Navy's permit and modifications.

The project description shall be revised as follows (underlines are additions):

PROJECT DESCRIPTION:

The project entails maintenance dredging of the Federal navigation channel at Key West. The dredge areas include the main ship channel from its southern terminus, extending north and including cuts A, B, and C, the channel widener at cut C known as the turning basin, Truman Harbor, and the area adjacent to Mallory Dock. The maintenance dredging is to a depth of -34 MLW plus 2 feet advance maintenance (except for Truman Harbor where the advance maintenance will be limited to 1 foot, plus 1 foot allowable overdepth. The area adjacent to Mallory Dock will be dredged to a depth of -30 feet at Mean Low Water, plus 2 feet advance maintenance and 1 foot over dredge. The resulting dredged material volume will be approximately 1,007,500 cubic yards. The dredged material will be placed in two disposal areas. All loose material in Truman Harbor and any material not suitable for ocean disposal will be barged to an upland disposal area on Fleming Key, with no return water discharge into surface waters of the State. Dredged material consisting of rock and sand, and material dredged for access to Mallory Dock, will be deposited outside of State waters in an Offshore Dredged Material Disposal Site (ODMDS) that has been approved by the U.S. Environmental Protection Agency (EPA).

After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality and is expected to be clearly in the public interest. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation and is expected to be of environmental benefit, the **permit is hereby modified** as stated above. By copy of this letter, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **June 17, 2013** expiration date, other Specific or General Conditions, or monitoring requirements of the permit. This letter must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes, as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

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A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in further modification of the permit or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this permit modification automatically becomes only proposed agency action on the application subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities under this permit modification until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time has expired.

Under Rule 62-110.106(4), Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding judge upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

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The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S.

In accordance with Rule 28-106.201, F.A.C., a petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C. Under Sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department

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Maintenance Dredging of Mallory Dock
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This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in Rule 62-110.106, F.A.C., a person may request a copy of the agency action. The Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice. The Department does not require notice of this agency action to be published. However, the applicant may elect to publish notice as prescribed in Rule 62-110.106, F.A.C., which constitutes notice to the public and establishes a time period for submittal of any petition.

If you have any questions regarding this matter, please contact me at the letterhead address (add Mail Station 300) or by telephone at (850) 414-7728.

Sincerely,



Martin K. Seeling
Environmental Administrator
Bureau of Beaches & Coastal Systems

MKS/sr



cc: Brock Durig, CNRSE, Jacksonville
Ed Barham, NAS Key West
Gus Rios, DEP, South District, Marathon
Tania McMillan, DEP, South District, Marathon
Mark Taynton DEP, BBCS
Dr. Robbin Trindell, FWC, Imperiled Species Management Section
FWC-Division of Law Enforcement
U. S. Army Corps of Engineers, Jacksonville

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(USACOE File No. 200300203 (LP-PK))
Paul Kruger, ACOE Regulatory Division, South Permits Branch
Julio Avel, City Manager, City of Key West
Lauri MacLaughlin, FKNMS, Key West
Anne McCarthy, FKNMS, Upper Keys Region
Audra Livergood, NMFS
BBCS Permit File

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated
Department Clerk, receipt of which is hereby acknowledged.

	
_____ Deputy Clerk	_____ Date